

NO. 48143-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

DANNY ALLEN WING,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Nelson Hunt, Judge

SUPPLEMENTAL BRIEF OF APPELLANT
(re appellate costs)

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

If the state substantially prevails on appeal, any request for appellate costs should be denied.

B. SUPPLEMENTAL ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Should Mr. Wing have to pay appellate costs if he does not substantially prevail on appeal and the state requests costs?

C. SUPPLEMENTAL STATEMENT OF THE CASE

Supplemental facts are in the Argument section.

D. SUPPLEMENTAL ARGUMENT

If the state substantially prevails on appeal, any request for appellate costs should be denied.

If Mr. Wing does not substantially prevail on appeal, he requests that no costs of appeal be authorized under Title 14 of the Rules of Appellate Procedure. The Court of Appeals has discretion to deny a cost bill even where the state is the substantially prevailing party on appeal. *State v. Sinclair*, 192 Wn. App. 380, 391, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); RCW 10.73.160(1) (the “court of appeals . . . may require an adult . . . to pay appellate costs.”). Imposing costs against indigent defendants raises problems well documented in *Blazina*: “increased difficulty in reentering society, the doubtful recoupment of

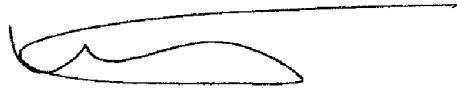
money by the government, and inequities in administration.” *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). *Sinclair* recognized the concerns expressed in *Blazina* applied to appellate costs and it is appropriate for appellate courts to be mindful of them in exercising discretion. *Sinclair*, 192 Wn. App. at 391.

The trial court found Mr. Wing qualified for indigent defense on appeal. Supplemental Designation of Clerk’s Papers, Motion and Declaration for Order Authorizing the Defendant to Seek Review at Public Expense and Providing for Appointment of Attorney on Appeal, and Order of Indigency Authorizing the Defendant to Seek Review at Public Expense and Providing for Appointment of Attorney on Appeal. Importantly, there is a presumption of continued indigency throughout the review process. *Sinclair*, 192 Wn. App. at 393; RAP 15.2(f). As in *Sinclair*, there is no trial court order finding Mr. Wing financial condition has improved or is likely to improve. *Sinclair*, 192 Wn. App. at 393. Mr. Wing is in DOC serving a 416 month sentence. CP 27. Given the serious concerns recognized in *Blazina* and *Sinclair*, this court should soundly exercise its discretion by denying the state’s request for appellate costs in this appeal involving an indigent appellant.

E. CONCLUSION

This court should impose no appellate costs on Mr. Wing if the state substantially prevails on appeal.

Respectfully submitted November 15, 2016.

A handwritten signature in black ink, appearing to read 'LISA E. TABBUT', with a long horizontal line extending to the right.

LISA E. TABBUT/WSBA 21344
Attorney for Danny Allen Wing

CERTIFICATE OF SERVICE

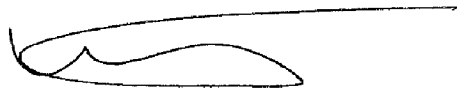
Lisa E. Tabbut declares as follows:

On today's date, I efiled the Supplemental Brief of Appellant to (1) Lewis County Prosecutor's Office, at appeals@lewiscountywa.gov and (2) appellate prosecutor Sara Beigh at sara.beigh@lewiscounty.wa.gov (3) the Court of Appeals, Division II; and (3) I mailed it to Danny Allen Wing/DOC# 326805

Washington State Penitentiary, 1313 North 13th Avenue, Walla Walla, WA 99362.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed November 15, 2016, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Danny Allen Wing, Appellant

LISA E TABBUT LAW OFFICE

November 15, 2016 - 11:57 AM

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